of a tenant holding under a short-term lease. *Melms v. Pabst Brewing Co.* (1899) 104 Wis. 7, 79 N. W. 738. In England, the House of Lords refused to grant an injunction restraining a tenant under a lease for 999 years from converting store buildings into dwelling houses, the neighborhood having changed so as to do away with any demand for store buildings. *Doherty v. Allman* (1878, H. L.) L. R. 3 App. Cas. 709. But where, as in the instant case, there has been no permanent change of conditions, or where the occupation of the premises is to be for a short term only, it seems only proper to enjoin even ameliorating waste. The lease merely gives the privilege to use the building and the landlord has the right to receive back, at the end of the term, the very thing which he has leased. *Agate v. Lowenbein* (1874) 57 N. Y. 604; *Hamburger & Dreyling v. Settegast, supra; Melms v. Pabst Brewing Co., supra.*

WILLS—EFFECT OF A LAPSE OF PART OF THE RESIDUARY ESTATE.—The testatrix directed that all the residue of her estate "including lapsed legacies" should be divided among certain legatees in specified proportions. One of the legatees died during the testatrix's lifetime. *Held,* that the legacy continued as part of the residue and should be distributed to the survivors. *Aitken v. Sharp* (1922, N. J.) 115 Atl. 912.

It is well settled that a lapse of any portion of the residuary estate itself does not inure to the benefit of the remaining residuary legatees but passes as if there had been an intestacy. Gardner, *Wills* (1903) 419; *Skrymsher v. Northcote* (1818, Ch.) 1 Swanst. 566; *Lyman v. Coolidge* (1900) 176 Mass. 7, 56 N. E. 831. This rule seems to have developed on account of a desire to effectuate the testator's unexpressed intentions. 2 Jarman, *Wills* (6th ed. 1910) 1056. The rule has been severely criticised, however, and the theory upon which it is based seems fallacious. *In re Gray's Estate* (1892) 147 Pa. 67, 23 Atl. 205; 2 Redfield, *Wills* (3d ed. 1876) 119; see *In re Dunster* [1909] 1 Ch. 103. Some courts, although advancing no reasons, do not recognize it. *Gray v. Bailey* (1873) 42 Ind. 349; *West v. West* (1883) 89 Ind. 529. And in at least one jurisdiction the rule has been changed by statute. *Woodward v. Congdon* (1912) 34 R. I. 316, 83 Atl. 433. In general it has been considerably restricted by holding it applicable only where the legatees take as tenants in common, and not as joint tenants or as members of a class. *In re Dunster, supra;* I Underhill, *Wills* (1900) sec. 336. No jurisdiction applies the rule if the testator's intention is expressed with sufficient certainty. *Swallow v. Swallow* (1896) 166 Mass. 241, 44 N. E. 132; *In re Palmer* [1893, C. A.] 3 Ch. 369. The general rule was considered in the instant case, but the court considered that the phrase "including lapsed legacies" showed the testatrix's intention that all lapsed legacies, whether in the residue or not, should continue as part of the residue and inure to the benefit of the surviving residuary legatees. Although this phrase alone is a meagre basis for an inference that the testatrix actually intended the result reached by the court's interpretation, nevertheless the decision seems sound in that it limits the application of a rule which is technical in its nature and of doubtful value.